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MICHIGAN LAW REVIEW

VOL. V

JANUARY, 1907

No. 3

JAMES VALENTINE CAMPBELL.*

THE Campbell ancestors of Judge Campbell were, as the name shows, Scotch. The earliest one in this country, his grandfather, was Thomas Campbell, an officer in an Highland Regiment, who settled on the Hudson. His son, Henry M. Campbell, was born in Ulster County, New York, September 10th, 1783. In early manhood he removed to Buffalo. When the War of 1812 broke out, he joined the American army, and was made Captain of an artillery company. In October, 1812, he married Lois Bushnell, a member of a New England family. Her nephew, the Reverend Horace Bushnell, became a very distinguished congregational divine and author. Captain Campbell was away on service when, in 1813, the British burned Buffalo. His house was burned. Mrs. Campbell and her relatives took refuge in the woods before the arrival of the enemy. After the war, he remained in Buffalo and was successful in business. He was elected one of the Judges of the Erie County Court, a position for which laymen were competent.

In 1826, he moved to Detroit where he remained until his death. He engaged in mercantile pursuits and, afterwards, in real estate business and for a time, was quite prosperous. He became prominent and had several public positions. He was side or associate Justice of the County Court, Alderman, Supervisor, Director of the Poor and president of a bank. On arriving at Detroit, he united with the St. Paul's Episcopal Church. Soon after he was chosen senior warden and served in this office the rest of his life. He con-

*This is the first of a series of papers that are to be published in the REVIEW on four distinguished Justices of the Supreme Court of Michigan—Campbell, Christiancy, Cooley, and Graves. The author of the present paper knew Judge Campbell better, probably, than did any man now living. The other papers will be written by Mr. Justice Moore, Mr. Hoyt Post and Professor H. B. Hutchins.—Ed.

tributed to the erection of the church edifice forty-five hundred dollars, about one-third of the total cost.

He was commonly called Judge Campbell, both in Buffalo and Detroit. Five children grew to maturity, beside the subject of our sketch. All were well educated, intelligent and cultivated. All were devoted to the service of the Episcopal Church. Two of the daughters married distinguished Detroit lawyers, Samuel T. Douglass and William P. Wells. One, Valeria, was, for nearly twenty years, the head of a successful Girls' School in Detroit. Lois, who was born in 1817 and died unmarried in 1842, is shown by her letters to have been a young lady of unusual intelligence and cultivation. Henry M., who was born in 1821, was drowned in the Detroit river in 1836.

James Valentine Campbell was born in Buffalo in 1823, and came with his family to Detroit in 1826. At this time, Detroit had from fifteen hundred to two thousand inhabitants, a large portion of whom were of French descent. The occupied town was bounded on the south by the river, which had then a steep bank, on the west by Wayne street, on the east by Randolph street and, on the north, it did not extend beyond what is now Fort street. There was a horse ferry between Detroit and Windsor. Indians gathered in the city at stated periods to dispose of furs and receive their annuities. Michigan, generally, was an unbroken wilderness. But a change soon came. The United States built several highways, extending far into the interior. The Erie Canal had been just opened. Large steamboats began to ply between Buffalo and Detroit. An increasing stream of immigration to the territory set in and continued until the financial crash of 1837. There were good times in Detroit. Business men prospered. Many lived freely. There developed a cultivated and intelligent society, probably not surpassed since in proportion to its numbers. Immigrants from the older States soon took the lead in politics and in business. The Campbells stood high in this society. A great change came after 1837 and Henry M. Campbell suffered with his neighbors. After a severe struggle, he managed to pay his debts and keep out of bankruptcy, but dying in January, 1842, he left little to his family, save a name unimpeachable for integrity and public spirit. His widow survived until 1876.

I find few materials for an account of the youth of James Valentine Campbell. There can be no doubt that, as a child, he must have had as good educational advantages as the town could afford. In 1833 his older brother, Henry, was sent to a private boarding school for boys in Flushing, Long Island. In 1835 James, then only twelve years old, joined his brother there. The school was

under the charge of the Reverend William Augustus Muhlenburg, a distinguished educator, a man of great talent and of the most earnest Christian character. It was an Episcopal School and graduated many men of eminence in that communion. In 1838, a Collegiate course was added, in which the curriculum appears to have been as extensive as that of the usual colleges of the period. The professors were sufficiently numerous and able. It was an admirable institution, from an intellectual, as well as a religious standpoint. Provision, then unusual, was made for the physical health and development of the students. It was closed about 1845, partly because a charter could not be obtained from the Legislature for a religious institution. James remained there until 1841 when he graduated in the collegiate course.

There is evidence that his conduct was satisfactory to his teachers, and his family, but I have not been able to ascertain anything as to his standing among his associates. A few letters of this period and earlier are well written for a boy of his age, but show no marked superiority. Before he went to Flushing, he had begun the study of French. Somewhere he learned to read and speak French fluently, an accomplishment which was of much use among his numerous French friends in Detroit. He acquired and retained a good knowledge of Latin but, perhaps, not greater than was usual with college graduates of the period. Immediately after his graduation, young Campbell, then only eighteen, began the study of law in the office of Douglass & Walker, Samuel T. Douglass, and Henry N. Walker. They were both learned and able lawyers. The latter was the editor of Walker's Chancery Report containing the decisions of the Court of Chancery of the State of Michigan from 1842 to 1845. The former was the editor of Douglass' Reports of the Supreme Court of the State from 1843 to 1847. In 1891, he was elected one of the Circuit Judges for the Circuit including Detroit. Douglass & Walker were both Democrats and so continued to the end.

Mr. Campbell was admitted to the bar in 1844, when but twenty-one. He entered into competition with a bar some of whose members were men of great ability. Among such were Jacob M. Howard, George V. N. Lothrop, Halmer H. Emmons and Alexander D. Fraser. In the fifties, there were added to this bar Charles I. Walker, Alfred Russell and Ashley Pond, all of whom soon rose to distinction.

I have not been able to ascertain many particulars of Mr. Campbell's early practice. I do not think his success was remarkably rapid. He was a fluent, but hardly an eloquent, speaker. I think it

must have been impossible for him to try to move either court or jury by appeals to unworthy prejudices, or to break down the testimony of an honest witness by subtle cross-examination. His success must have been owing to his quickness of apprehension, his persevering industry, his absolute trustworthiness, his great legal learning, his accurate judgment of men and business, his pleasant manners and, perhaps, in some degree, to his large acquaintance. The fourth Michigan, the last volume of our reports while he was a practicing lawyer, shows that he had many and important cases in our Supreme Court. In 1857, thirteen years after his admission to the bar, he was one of the leading lawyers of the city and state.

In that year, he was elected one of the four Judges of the new Supreme Court of Michigan. His associates were Martin, Manning and Christiancy, all much older than Campbell. All were chosen by the then recently organized Republican party. Judge Campbell's father was a Whig and the son clung to his party, though his legal preceptors were Democrats. He passed from the Whig party to the Republican. I do not know the forces, which at thirty-four made Judge Campbell the candidate of his party for this high office, but it is certain that the result was not reached by his own wire-pulling. I have never known a man in political life, less self-seeking, or less inclined to the management of caucuses or conventions. Nothing but a general belief in his merits could have led to his nomination. The statute required the Judges to be chosen one every two years at the spring election. To effect this, the Judges chosen drew lots for their respective terms, Judge Campbell drew the term for six years. In 1863, he was re-elected and again at the end of each successive term. He was on the bench in 1890 when he died, having held the position for thirty-two successive years, a continuance in that office quite unusual. His remaining in office for such a period arose out of several facts not likely to be repeated. The chief one is that at each time when he was a candidate the Republican party had a majority of the votes as is shown in the election of its Regent, as well as its Judge. Most voters stick by their party candidate, and to be successful the first requisite is to be the candidate of the prevailing party. Again, Judge Campbell was very popular, especially in Wayne County. He lost no Republican votes and won many of the opposing party. In these times the party had a most praiseworthy habit of renominating, without a contest, any Judge who had filled his office with credit. I do not remember that there was any opposition to Judge Campbell's renomination, save at his last nomination. At this time, a brilliant Detroit lawyer became an opposing candidate, and man-

aged, by hard work, to secure some delegates from the Detroit caucuses. But in the State judicial convention Judge Campbell's popularity made his victory easy. Judge Campbell's early elevation to the Supreme Bench and his continuance there, almost without effort during the remainder of his life, was a great honor, but it took away all chance of his accumulating a fortune, or even of acquiring a modest competence, and led to a life of constant economy. The War of the Rebellion, and the issue of paper money, caused a great increase of prices and virtually cut in two a salary altogether inadequate in ordinary times.

In 1859 Judge Campbell was appointed one of the Professors in the Law Department of the University, then just opened. For several years he was Dean of the Faculty. His first associates were Thomas M. Cooley and Charles I. Walker. He continued in this position until 1885 when he resigned. During the most of this time, the law course extended over only six months of each year. His lectures occupied on an average between one and two days of each week during term time.

In 1876 Judge Campbell published his outlines of the political history of Michigan, a volume of several hundred pages. His other publications, which were not very numerous, were articles in law magazines and addresses on various public occasions. He was a member of the Detroit Library Commission and its President from 1880 to 1889 and, as President, made several reports of its condition which were printed. He was a leading member of St. Paul's Episcopal Church in Detroit and took great interest, not only in the local affairs of the church, but in the widest concerns of the denomination. He wrote two essays which were intended to affect the action of the General Convention of the church upon questions of great importance.

From an early period, he had great facility in writing for his friends pleasant verses. He kept this up all his life, and Christmas days and some other anniversaries were made interesting for his children, grand-children and other intimate friends, by his poetical compositions.

Judge Campbell was married November 8th, 1849, to Cornelia Hotchkiss, of Oneida Castle, New York. This marriage was a happy one. She died in 1888 and her death was probably a large cause of his death two years later.

They had six children who grew to maturity, five of whom are now living. Henry M. is a leading lawyer in Detroit. A younger brother, Charles, is associated with Henry in the practice of law. Douglas is now Professor of Botany in Stanford University, Cali-

fornia. He is the author of several treatises on botanical subjects and of many articles published in scientific magazines. He is a man of much distinction in his specialty. Edward is Director of the Chemical Laboratory in the University of Michigan. He also is a man of distinction in his department, and has contributed numerous articles to scientific journals embodying his researches in metallurgy and chemistry. In 1892, through an explosion in the Chemical Laboratory, he lost his eyes. In spite of this terrible misfortune, by indomitable industry and a hopeful disposition, he has been able to successfully continue his work. The daughter, Cornelia, resides in Detroit, unmarried. All the boys received a High School and University education save James, who left the Detroit High School in his senior year to engage in mercantile business. He died in 1894.

In personal appearance, Judge Campbell was very prepossessing. He was of average stature, neither spare, nor fleshy. He had bright eyes, a clear complexion, regular features and a distinguished and beautiful face. His hair turned white early and, though active in his movements, he seemed older than he was. In manner, he was a gentleman, kind and polite to all of every class, sociable to all and with no assertion of superiority in manner or words. He had much personal dignity, was never over familiar, never used slang words, nor indulged in coarse jokes. His purity of mind was reflected in his language. He was free from all affectation, and all insincerity. His words were the exact expression of his thoughts. He liked the society of intelligent persons and could talk or listen with equal interest. He liked to talk on the early history of Detroit and the old inhabitants of French descent. Though perhaps not very fond of general society, so long as the custom of New Year's calls remained, he devoted the day to visiting his friends. From his youth, he was very popular among all classes.

He was a many sided man, interested in many subjects besides the law. He loved knowledge for its own sake and often surprised his listeners by unexpected and unfamiliar stores of information. He was a constant student to the end. Though a writer of verse he had no uncommon knowledge of the great poets or of literature. He was interested in geology and, to some extent, in chemistry, but I find no evidence that he ever read Darwin or any of the biologists, who sought to prove that man is descended from some lower animal. He disliked metaphysics and all subtle reasoning of every kind. I think he lacked in the power of analysis. In most of his writing, he appears to have begun to write when he began to think and to have put down his thoughts as they happened to occur to

him, without classification. He had a keen perception of men and judged of the results of conduct from experience and not from theories. He had an optimistic nature, expecting the best from his acquaintance and from the developments of government and society. And yet he was very conservative, clinging to the old and especially to what worked well in practice, whatever theoretic objections might be raised.

Brought up in the Protestant Episcopal faith, there is no evidence that he ever wavered in his convictions. In one of his unpublished papers he expresses the usual Protestant view of the character of the Papal Church, but he had many friends who were Catholics and many who belonged to other Protestant denominations. I never heard him express the slightest intolerance of any religious belief. Some of the new doctrines concerning science and scripture were painful to him, but they did not affect his belief. His assured Christian faith was no doubt a great cause of that serenity of mind which was a striking characteristic. He always had a calm exterior. He was not wanting in sensitiveness to any reproach, or any illtreatment, but his temper appeared to be under perfect control. He was very fond of his friends, especially of his old friends and could, with difficulty, be brought to believe anything to their disparagement. He had also his prejudices against persons, but these were few and seldom exhibited.

During the Civil War and later, he was on the bench and restrained by his position from much public expression of his party feelings. But on the Fourth of July, 1861, at the opening of the War, he gave, in Lansing, an address which showed his complete sympathy with the prosecution of the War and his hatred of secession theories. It was an able, eloquent and timely speech. He was a believer in local government for local things in Church and State and for the restriction of the power of the United States to its proper province. Many things in the conduct of the Republican party during the war and after must have been opposed to his views, but he never publicly expressed such opposition, and he always retained the confidence and support of the political leaders of the party.

He wrote a very clear beautiful hand. His manuscript is remarkably free from corrections. He wrote rapidly. His style is simple and direct. His sentences are short and uninvolved. He uses generally the most familiar words. He aims only to express his meaning without attempting a show of learning.

His occasional addresses or articles are always instructive and interesting and sometimes very able. An address delivered before the State Teachers' Association in 1873 is full of wise suggestions on the subject of teaching.

In the *American Law Review* of April, 1880, he published an article on "Materials for Jurisprudence," which abounds in valuable suggestions on the history and present state of the law. It shows much learning and covers a vast field without, perhaps, reaching any definite result.

He published in the *Bench and Bar* for July, 1871, a very learned and able article on taking of private property for purposes of utility. In this, he shows that the right to take private property on paying compensation does not depend at all on its being put to a public use, but on the necessity of each case, a necessity which may be sufficiently great where the benefit is confined to a single individual. He contends that the right of eminent domain conferred in the building of railroads does not depend on any special public use but on the fact, that otherwise no railroads could be built. Incidentally he shows his strong dislike of state or municipal ownership in any business which can be safely kept in private hands.

He read, before the University Senate, (the time does not appear) an interesting, but by no means exhaustive, discussion of the origin and merits of "Trial by Jury." He is not unaware of its defects, but contends that its universal acceptance and continuance in common law countries shows its merits in spite of all theoretical and practical defects. And no doubt under popular government if the people, with substantial unanimity, want anything that is a conclusive argument for their having it, whatever may be its defects. The great argument for popular government is not its wisdom, but the fact that the people governed are better satisfied with it, than any other form. No one can think that an ideal government, when the votes of the most vicious and the most ignorant are put on par with those of the wisest and best. Judge Campbell discusses the origin of jury trial according to the light of his day. He would have been greatly surprised to find that, according to the latest authorities, jury trial was not an Anglo Saxon institution nor did it begin with the local courts. It came from the Norman and later kings of England, and was conferred on the people gradually, not as a right but a privilege.

In 1881 he delivered, before the University Senate, a beautiful, touching and just tribute to the memory of Rev. George P. Williams, for so many years an able, devoted and much beloved Professor in the University.

The "Outlines of the Political History of Michigan" was originally intended as a sketch to be used for the purposes of the Michigan Committee for the Centennial of the Declaration of Independence. It was prepared in great haste and shows many marks of this

haste. Its author was fully aware of its imperfections. Judge Campbell had special qualifications for the work. He had resided in Michigan from 1826 and, as a lawyer, had been familiar with all public events. As a judge from 1858 he had been acquainted with the state officials. His knowledge of French and his intimacy with the French families of Detroit enabled him to understand the French part of our history, better perhaps than any other man. He knew men who had known the entire history of the territory and state from 1796 when it first came under American rule. The best part of the work came from this special knowledge. His descriptions of the territorial Judges are an example. They are racy and life-like. I think he spent too much time on the early French explorations. I think it would have been better if he had confined himself almost entirely to the French settlements within the bounds of the State. His space did not permit as full a treatment of matters pertaining chiefly to Canada, and in this broad treatment he brought his work into comparison with that of a great historian, Parkman.

In 1859, at the opening of the law department, Judge Campbell, as Dean of the Law Fraternity, delivered an able and interesting address on the "Study of the Law." He showed its importance to other classes of the community as well as to lawyers. He emphasized the duties of Judges to follow not their individual notions of justice but the law as previously settled, so that suitors may be judged by the rules on which they have justly acted.

In 1866, at the close of the Law School term, he delivered before the graduating class, an address on "Law and Lawyers in Society." He presents a picture of lawyers as they should be rather than as they are. He points out that the wise conclusions which the people generally reach in political matters, come from their being convinced by the arguments of wise leaders. He urges a cultivation not merely of the branches of the law needed in one's business, but of its whole domain, including political questions. He urges also the importance of general learning and cultivation. He points out the difference between the Parliament of England and our Legislatures. The former represents the complete authority of the realm, the latter are subject to a supreme written law.

Judge Campbell was very fond of law students, and was very popular with them. He was exceedingly affable and sociable, always ready to hear their wants and give wise advice. In judging their delinquencies and deficiencies, he advocated in faculty meetings the most lenient view. Wherever possible, he wished to overlook all violations of discipline and graduate every student not grossly ignorant or immoral.

His law lectures were pretty fully written out. He read them somewhat rapidly. Occasionally he extemporized and sometimes wandered from the subject in hand. All the students agree that his lectures, whether written or oral, were very interesting, but they generally agree on one criticism. They say that they could not take full notes, that the lectures had too few definite legal propositions which they could write down or remember. They felt that they could not learn the principles of law from him as well as from some of the other professors.

Judge Campbell's life work was as a Judge. His record is in his opinions contained in the State Reports. They are in the fifth to the seventy-ninth volumes, inclusive. The total number of opinions written by him is, probably, between two and three thousand, in length, from a few lines to many pages. Most them will never be much studied save by lawyers or judges seeking for precedents. In this they are like other judicial opinions. To measure this work in detail is, of course, impossible. Each case had doubt enough in it to induce one or more lawyers to argue each side. Sometimes a case was so doubtful as to produce a sharp division of opinion between the Judges. There would probably have been many more such divisions except for the habit of the Judges to leave most cases almost entirely to the Judge to whom the opinion was entrusted. If there had been a Court of Appeal, doubtless many of the judgments would have been reversed. Some which were taken to the United States Supreme Court were reversed.

The law partakes of that uncertainty of opinion which pervades every department of life. We cannot measure Judge Campbell by discussing the wisdom or unwisdom of the mass of his opinions, nor do I think it best to confine myself to those laudatory epithets, which are usually applied to every respectable Judge after his death. I am seeking to present Judge Campbell as an individual and not merely as a worthy member of a class. No doubt many will disagree with what I say. Perhaps some excuse for the freedom of my views may be found in an acquaintance of thirty years and a practise before him for about the same time, united with association as law professor for seventeen years.

He was a perfect listener to the argument of counsel, and the more confused and embarrassed the counsel appeared, the greater was his patience. If the necessities of business had not required the limitation of arguments, his patience might have equaled that of Chief Justice Marshall. The latter is reported to have replied to an associate, who had suggested the stopping of a lawyer who had been talking three days and saying nothing, "True, he has said nothing

so far, but he may be just about to say something." He was very quick to understand the bearings of an argument and quick to come to a decision of its merits, and quick in writing his opinions. This great rapidity may have led to erroneous decisions. In the time when Campbell, Cooley, Christiancy and Graves constituted our Supreme Court, Judges whom some think the ablest Bench the State has had, there was much complaint of the haste of the decisions. A. B. Maynard, a well known lawyer, voiced this complaint, by saying to the Court, "Your Honors have got a high reputation for the celerity of your conveyances and it is now time for you to consider the safety of your passengers." The Judges thought most guilty of undue haste were Cooley and Campbell who were engaged in much work other than judicial. Judge Cooley, alluding to this common complaint of haste, justified it in conversation with me and said their decisions were as good as though more time had been taken. He may have been mistaken. This must always be borne in mind in judging the time taken in decisions. The Judges have a certain amount of work to be done in a given time. Delay works an evil sometimes not less than wrong decision. Right or wrong they must decide and the power of rapid work is an invaluable asset in a Judge.

Judge Campbell had great learning, not only in the American and English cases and Text Books, including Admiralty Law, but, also, in the history of our institutions, local as well as general. He knew much of Roman Law and the Law of Nations and of early French customs and something of other Continental Law. He was remarkably free from political bias or fear of public opinion or subservience to any temporary wave of public passion. The trust in his absolute integrity of motive was justly perfect. Still I think he was once unduly affected by confidence in an old friend whose case was on trial before him.

He was very independent in his opinions. He had a strong sense of the justice of a case, and was very reluctant to yield his views of justice to the opinions of his associates, or to any precedents. He wished to decide every case as appeared to him right, but perhaps he never manifested that love of arbitrary power, that disposition to have one's own way at all hazards, which is natural to almost all human beings and appears occasionally on the Bench.

He had great faith in the people and in popular institutions and in all the great maxims and traditions of the common law, but he had not the slightest trace of the demagogue. He had some strong prejudices but they were generally good prejudices of a kind necessary to stability of character in the best men.

It has often been said that in criminal cases, he favored too much the accused, and made conviction of the guilty very difficult. Whether or not this is so, I am no judge, but I think it plain that he had little sympathy with that growing public feeling, that somehow more of the guilty must be convicted and punished, even at the risk of some additional hazard to the innocent.

He had no subtle theories nor much refined abstruse reasoning. In all his opinions, he appears to have had chiefly in view the effect of the decision on what he thought the merits of the case before him. I think he seldom made a decision likely to strike the average mind as unjust.

There are two important and distinct judicial tendencies, both of which may appear at different times in the same Judge, but one or the other of which make the prevailing tendency of his mind and largely contributes to his judicial character.

The first leads the Judge to ascertain from his sense of justice, or any other powerful conviction, operating, perhaps, unconsciously on his mind, the result at which he wishes to arrive and, having determined this, then to make in his opinion the best argument he can to sustain this result. This is the method in which many opinions are obtained and defended. Our interests or our prejudices lead us to adopt certain views, and we then defend them, according to the measure of our abilities. The contrarities of opinion among able lawyers are largely produced by their retainers. The desire to decide each case by itself, according to the feeling of the Judge, leads to the forgetfulness of general principles and to distinctions between the cases so subtle that they are no guide to the inquirer.

The second method by which Judges reach their decision, is by inquiring what legal principles are applicable to the case at hand. These principles should be arrived at by a consideration of the statutes or precedents, or where no rule can be found in either of these, then by the development of a rule which will be a wise and just one for future cases as well as for that at bar. No doubt a deep sense of justice should pervade the mind of the Judge who is looking for a legal rule, but it is the justice of a rule not applicable to the case at bar alone, but to all other like cases, a rule which shall make the law as certain as is possible.

It is very likely that Judges, who are influenced by the first tendency, will decide their cases to the general satisfaction as much or more than those of the second tendency, but it is certain that they will not thereby contribute much to the building up of the law as a system, or to their own lasting fame. The law is a system of principles applicable each to a great many cases or it is as uncertain as

the verdict of juries, no one of which is any precedent for a succeeding jury. All the Judges, who are long remembered, depend for their remembrance on the legal principles which they have stated in such language as to be a guide to the future.

The great criticism I make on Judge Campbell is that some of his leading decisions are of the first-class. He early disagreed with the other members of our Supreme Court, when they adopted the rule generally prevailing, that statutes are binding on the Court unless in plain conflict with some provision of our written constitution, and yet he has nowhere undertaken to state any basis for the power of the Courts to set aside statutes not thus in conflict. If there is such a power, its origin and its limits need the clearest statement. It is vain to seek in his opinions, any attempts even to formulate such statements. It seems sometimes reason enough for him to set aside a statute that he thinks it unjust. No doubt Legislatures often pass unwise and unjust statutes, not in conflict with the written constitutions and the Courts not unnaturally are reluctant to enforce them, but unfortunately, justice and injustice are not so plain, that all men agree as to them. We have to have someone to determine what is just and what is unjust in all State matters, and the people must submit to that determination or anarchy reigns.

The decisions of the Courts do not rest for their validity on their justice. Not unfrequently, they have seemed to me plainly unjust but we obey them because the final determination of justice in suits is with the Courts—they have power to enforce their judgments. In the general division of governmental powers the Legislature surely represent the law-making power. Subject to the restraint of our written constitutions, it is for them to say what rules are just. They represent the people for this purpose. If not, what is their sphere? Holding void statutes, not in conflict with written constitutions, can be supported only on the ground, on which all arbitrary power is sustained, that the Judges having the last say in a cause can make the law for that purpose, that no one can review their judgments, that the public good requires such a violation of the law, just as the executive is thought justified in times of civil war, in disobedience of the most fundamental rules as to personal liberty in order to put down rebellion. But, when this is done, we have not a rule of law but an exercise of arbitrary will, even though this will in a given case is much wiser than the law.

The Courts in interpreting statutes and constitutions have much power to mould them, but where they pass from interpretation to nullifying statutes not in conflict with our written constitutions because they think them unjust, they pass from interpretation to

something not in their province and are guilty of usurpation. If there are any principles outside of written constitutions so fundamental as to authorize the nullifying of statutes, such principles need to be stated with the greatest clearness so that future legislatures and all the people may know how to govern themselves. I think some of Judge Campbell's decisions on constitutional questions fail in this respect also.¹

He does not appear to me to state clearly the general basis on which statutes may be held void, not in conflict with the written constitutions nor the special rules which in particular cases cause such invalidity.

There is no doubt, that other members of the Supreme Court of the State and the Court itself have held laws unconstitutional, without pointing out any provision of the constitution showing the conflict. *People v. Salem*, 20 Mich. 452, is a conspicuous instance but Judge Campbell appears to have been the first Judge to do this and perhaps the prevalence of the doctrine in this State is more due to him than to any one else.

And failure to state the principles of his decisions is not confined to constitutional questions. I have had occasion to make a most careful study of his opinion in *Toms v. Williams*, 41 Mich. 552, without being able to find the rule that it lays down for similar cases.

It were hardly worth while to make these criticisms if Judge Campbell had not been a very eminent Judge, whose high character, ability and long service have made a great impression on the laws of the state. I make them also because his occasional unwillingness or inability to state the principles of his decisions constitute his greatest, if not, his only conspicuous judicial defect. These criticisms do not extend to his opinions generally.

Though Judge Campbell was but thirty-five when he took his seat on the Bench, his earliest opinions, show no immaturity of mind. Some of them show great ability and learning.² And his latest are free from any evidence that his powers were declining. He had the great good fortune of thirty-two years continuous service on the Bench in the full possession of all his high powers.

Judge Campbell was fortunate in his death as in his life. He was sitting, after breakfast, March 26, 1890, reading his daily paper, apparently in his usual health, when his heart gave way and he

¹ See his opinions in: *Sears v. Cottrell*, 5 Mich. 251; *Woodbridge v. Detroit*, 8 Mich. 274; *State Tax Land Cases*, 54 Mich. 352-396; *Brown v. Kalamazoo Judge*, 75 Mich. 274; *People v. Phippin*, 70 Mich. 630.

² *American Telephone Co. v. Moore*, 5 Mich. 368-379; *People v. Jones*, 6 Mich. 176; *People v. Tyler*, 7 Mich. 161.

dropped to the floor dead. Neither he nor any of his friends knew that he had heart disease. Perhaps the largest Bar meeting ever held in Detroit attested the shock at his sudden death and the universal feeling that a great and good man, a learned and upright Judge had passed away. His memory is lovingly cherished by all who knew him well. His fame, as a Judge, will depend on the number and importance of the legal principles established in his opinions. His life is a worthy model for imitation by all lawyers who would be governed by the highest ideals in private and public life.

C. A. KENT.

DETROIT, MICHIGAN.